

PAPERWORK REDUCTION ACT SUBMISSION

RSPA-98-4957-14

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW Washington, DC 20503.

1. Agency/Subagency originating request Research and Special Programs Admin.,		2. OMB control number a. <u>2 137-0 579</u> b. <input type="checkbox"/> None	
3. Type of information collection (check one) a. <input type="checkbox"/> New collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input checked="" type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions		4. Type of review requested (check one) a. <input checked="" type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by: ____ / ____ / ____ c. <input type="checkbox"/> Delegated 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 6. Requested expiration date a. <input checked="" type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: ____ / ____	
7. Title Management Information System (MIS)' Standardized Data Collection and Reporting of Drug			
8. Agency form number(s) (if applicable) Testing Results N/A			
9. Keywords PIPELINE, SAFETY, DRUG ABUSE, DRUG TESTING			
10. Abstract Gas and hazardous liquid operators are required to prepare an annual MIS drug test which includes the results of the operator's anti-drug program			
11. Affected public (Mark primary with "P" • all others may apply with "X") a. <input type="checkbox"/> Individuals or households b. <input checked="" type="checkbox"/> Business or other for-profit c. <input type="checkbox"/> Not-for-profit institutions d. <input type="checkbox"/> Farms e. <input type="checkbox"/> Federal Government f. <input type="checkbox"/> State, Local or Tribal Government		12. Obligation to respond (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input checked="" type="checkbox"/> Mandatory	
13. Annual reporting and recordkeeping hour burden a. Number of respondents <u>2,419</u> b. Total annual responses <u>1,713</u> 1. Percentage of these responses collected electronically <u>0</u> c. Total annual hours requested <u>12,809</u> d. Current OMB Inventory <u>12,809</u> e. Difference f. Explanation of difference 1. Program change 2. Adjustment		14. Annual reporting and recordkeeping cost burden (in thousands of dollars) a. Total annualized capital/startup costs <u>0</u> b. Total annual costs (O&M) c. Total annualized cost requested d. Current OMB inventory e. Difference f. Explanation of difference 1. Program change 2. Adjustment	
15. Purpose of information collection (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Application for benefits b. <input checked="" type="checkbox"/> Program evaluation c. <input type="checkbox"/> General purpose statistics d. <input type="checkbox"/> Audit e. <input type="checkbox"/> Program planning or management f. <input type="checkbox"/> Research g. <input checked="" type="checkbox"/> Regulatory or compliance		16. Frequency of recordkeeping or reporting (check all that apply) a. <input checked="" type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input checked="" type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe)	
17. Statistical methods Does this information collection employ statistical methods? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		18. Agency contact (person who can best answer questions regarding the content of this submission) Ntmt: <u>Marvin Fell</u> Phone: <u>(202) 366-6205</u>	

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8 (b) (3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8 (b) (3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Supporting Statement
Management Information System (MIS) Standardized Data Collection and
Reporting of Drug Testing Materials

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

Drug abuse is a major societal problem, and it is reasonable to assume that the problem exists in the pipeline industry as it does in society as a whole. Because of the potential harmful effect of drug abuse on safe pipeline operations, warrants imposing comprehensive drug testing regulations on the pipeline industry. These rules (49 CFR 199) require annual information collection of the results of the drug testing program.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The Research and Special Programs Administration (RSPA), and cooperating state agencies use the information to monitor the results of the pipeline drug testing program for each pipeline operator. If this collection of information were not conducted, the results of pipeline company anti-drug programs could not be evaluated.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decisions for adopting this means of collection. Also describe any consideration of using information technology to reduce the burden.

RSPA has developed a system for operators to file the reports electronically. Many operators take advantage of this option.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use purposes described in Item 2 above.

There is no duplication. There is no similar information available.

5. If the collection of information impacts small businesses or other small entities,

describe the methods used to minimize burden.

The drug testing regulations (Part 199) exempt operators of master meter systems, which are the smallest operators, from the drug testing program. Other small operators while required to collect test information, need not send it to Federal Government unless requested specifically by the Administrator of RSPA. Large operators however, are required to send reports on an annual basis.

6. Describe the consequence to Federal program or policy activities if the collection were conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Any reduction in the frequency would provide RSPA with less timely information. Potential problems would go unheeded for a longer time posing a safety risk to the public. There are no other obstacles to reducing the burden.

7. Explain and circumstances that require the collection to be conducted in a manner:

requiring respondents to report information to the agency more than quarterly;

requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

requiring respondents to submit more than an original and two copies of any document;

requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;

in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

requiring the use of a statistical data classification that has not be reviewed and approved by OMB;

that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to extent permitted by law.

This information collection has no special circumstances described in the above list.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in the response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be reported.

This NPRM will be published along with the submittal of this information collection to OMB.

9. Explain any decision to provide any payment for gift to respondent, respondents other than remuneration of contractors or grantee.

There is no remuneration provided.

10. Describe the assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy.

The information collected in the annual pipeline drug program information system report will not intrude on the legitimate privacy rights of an individual other than in statistical form.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Apart from drug test and rehabilitation records that are name-specific, the information collection regulations do not involve questions of a sensitive nature.

12. **Provide estimates of the hour burden of the collection of information.**

The estimated burden to industry is outlined below:

There are approximately:

775 Transmission operators
225 Liquid pipeline operators
706 Small distribution operators
673 Medium and Large distribution operators
2,419 Total Operators

Small operators estimated to be 706 operators do not have to send reports annually and therefore are excluded from the reporting burden estimates but not the reporting estimates.

Average reporting time per operator is 2 hours X 713 operators = 3,426 hours
Average recordkeeping per operator is 2 hours X 2,419 operators = 4,838 hours
Total information burden on industry is 8,264 hours

The total annual cost to industry is 7,264 X \$30 per hour = \$181,600

13. **Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection information.**

There are no additional costs beyond the paper work expenses.

14. **Provide estimates of the annualized cost to the Federal Government.**

The estimated annual cost of the pipeline drug program management information system to the Federal Government is outlined below. There are 1,713 reports

Validation of reports at 30 minutes each	= 856 hours
Reverification of 20% of reports at 30 minutes each	= 171 hours
Input reports into data bank at 10 minutes each	= 285 hours
<u>Analysis of data</u>	<u>= 75 hours</u>
Total government burden hours	= 1,387 hours

Total Federal Government cost = 1,387 hours X \$25 per hour = \$34,675

15. **Explain reasons for changes in burden, including the need for any increase.**

16. For the collection of information whose results are planned to be published for statistical¹ use, outline plans for tabulation, statistical analysis, and publication.

This information is not used for statistical purposes.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

RSPA is not seeking approval to not display expiration date.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions" of OMB Form 83-I.

There are no exceptions.

(A) means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce, but

(B) does not include gathering gas in a rural area outside a populated area designated by the Secretary as a rural area.

} other than regulated gathering

(22) "transporting hazardous liquid"—

(A) means the movement of hazardous liquid by pipeline, or the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline, in or affecting interstate or foreign commerce, but

(B) does not include moving hazardous liquid through—

(i) gathering lines in a rural area;

(ii) onshore production, refining, or manufacturing facilities; or

(iii) storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities.

(b) GATHERING LINES.—(1)(A) Not later than October 24, 1994, the Secretary shall define by regulation the term "gathering line".

(B) In defining "gathering line" for gas, the Secretary—

(i) shall consider functional and operational characteristics of the lines to be included in the definition; and

(ii) is not bound by a classification the Commission establishes under the Natural Gas Act (15 U.S.C. 717 et seq.).

(2)(A) Not later than October 24, 1995, the Secretary shall define by regulation the term "regulated gathering line". In defining the term, the Secretary shall consider factors such as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas or hazardous liquid, as appropriate, in deciding on the types of lines that functionally are gathering but should be regulated under this chapter because of specific physical characteristics.

(B)(i) The Secretary also shall consider diameter when defining "regulated gathering line" for hazardous liquid.

(ii) The definition of "regulated gathering line" for hazardous liquid may not include a crude oil gathering line that has a nominal diameter of not more than 6 inches, is operated at low pressure, and is located in a rural area that is not unusually sensitive to environmental damage.

§ 60102. General authority

(a)(1) MINIMUM SAFETY STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The standards—

(A) apply to transporters of gas and hazardous liquid and to owners and operators of pipeline facilities;

tivity the names of participating operators of underground pipeline facilities to whom the notice, will be transmitted.

PART 199—DRUG AND ALCOHOL TESTING

Subpart A

Sec.

- 199.1 Scope and compliance.
- 199.3 Definitions.
- 199.5 DOT procedures.
- 199.7 Anti-drug Plan.
- 199.9 Use of persons who fail or refuse a drug test.
- 199.11 Drug tests required.
- 199.13 Drug testing laboratory.
- 199.15 Review of drug testing results.
- 199.17 Retention of sample and retesting.
- 199.19 Employee assistance program.
- 199.21 Contractor employees.
- 199.23 Recordkeeping.
- 199.25 Reporting of anti-drug testing results.

Subpart B—Alcohol Misuse Prevention Program

0 Purpose.

1 Applicability.

1.202 Alcohol misuse plan.

1.203 Alcohol testing procedures.

1.205 Definitions.

199.207 Preemption of State and local laws.

199.209 Other requirements imposed by operators.

199.211 Requirement for notice.

199.213 Starting date for alcohol testing programs.

199.215 Alcohol concentration.

199.217 On-duty use.

199.219 Pre-duty use.

199.221 Use following an accident.

199.223 Refusal to submit to a required alcohol test.

199.225 Alcohol tests required.

199.227 Retention of records.

199.229 Reporting of alcohol testing results.

199.231 Access to facilities and records.

199.233 Removal from covered function.

199.235 Required evaluation and testing.

199.237 Other alcohol-related conduct.

199.239 Operator obligation to promulgate a policy on the misuse of alcohol.

199.241 Training for supervisors.

199.243 Referral, evaluation, and treatment.

199.245 Contractor employees.

AUTHORITY: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, and 2002; 49 CFR 1.53.

SOURCE: 53 FR 47096, Nov. 21, 1988, unless otherwise noted.

Subpart A

§ 199.1 Scope and compliance.

(a) This part requires operators of pipeline facilities subject to part 192, 193, or 195 of this chapter to test employees for the presence of prohibited drugs and provide an employee assistance program. However, this subpart does not apply to operators of "master meter systems" as defined in § 191.3 of this chapter or to liquefied petroleum gas (LPG) operators.

(b) Operators with more than 50 employees subject to drug testing under this part need not comply with this part until April 20, 1990. Operators with 50 or fewer employees subject to drug testing under this part need not comply with this part until August 21, 1990.

(c) This part shall not apply to any person for whom compliance with this part would violate the domestic laws or policies of another country.

(d) This part is not effective until January 2, 1995, with respect to any employee located outside the territory of the United States.

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-1, 54 FR 14923, Apr. 13, 1989; Amdt. No. 7, 57 FR 31280, July 14, 1992; 53 FR 60260, Dec. 23, 1993]

§ 199.3 Definitions.

As used in this part—

Accident means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid pipeline facilities.

Administrator means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

DOT Procedures means the *Procedures for Transportation Workplace Drug Testing Programs* published by the Office of the Secretary of Transportation in part 40 of this title.

Employee means a person who performs on a pipeline or LNG facility an operating, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter. This does not include clerical, truck driving, accounting, or other functions not subject to part 192, 193, or 195. The person

may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

Fail a drug test means that the confirmation test result shows positive evidence of the presence under DOT Procedures of a prohibited drug in an employee's system.

Operator means a person who owns or operates pipeline facilities subject to part 192, 193, or 195 of this chapter.

Pass a drug test means that initial testing or confirmation testing under DOT Procedures does not show evidence of the presence of a prohibited drug in a person's system.

Prohibited drug means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 & 1987 Cum.P.P.): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). In addition, for the purposes of reasonable cause testing, "prohibited drug" includes any substance in Schedule I or II if an operator has obtained prior approval from RSPA, pursuant to the "DOT Procedures" in 49 CFR part 40, to test for such substance, and if the Department of Health and Human Services has established an approved testing protocol and positive threshold for such substance.

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989]

§ 199.5 DOT procedures.

The anti-drug program required by this part must be conducted according to the requirements of this part and the DOT Procedures. In the event of conflict, the provisions of this part prevail. Terms and concepts used in this part have the same meaning as in the DOT Procedures.

§ 199.7 Anti-drug plan.

(a) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this

part and the DOT Procedures. The plan must contain—

(1) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program;

(2) The name and address of each laboratory that analyzes the specimens collected for drug testing;

(3) The name and address of the operator's medical review officer; and

(4) Procedures for notifying employees of the coverage and provisions of the plan.

(b) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act or section 205(a) of the Hazardous Liquid Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989; Amdt. 199-4, 56 FR 31091, July 9, 1991; 56 FR 41077, Aug. 19, 1991]

§ 199.9 Use of persons who fail or refuse a drug test.

(a) An operator may not knowingly use as an employee any person who—

(1) Fails a drug test required by this part and the medical review officer makes a determination under § 199.15(d)(2); or

(2) Refuses to take a drug test required by this part.

(b) Paragraph (a)(1) of this section does not apply to a person who has—

(1) Passed a drug test under DOT Procedures;

(2) Been recommended by the medical review officer for return to duty in accordance with § 199.15(c); and

(3) Not failed a drug test required by this part after returning to duty.

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989]

§ 199.11 Drug tests required.

Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(a) *Pre-employment testing.* No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this part.

(b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. If an employee is injured, unconscious, or otherwise unable to evince consent to the drug test, all reasonable steps must be taken to obtain a urine sample. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

(c) *Random testing.* Each operator shall administer, every 12 months, a number of random drug tests at a rate equal to 50 percent of its employees. Each operator shall select employees for testing by using a random-number table or a computer-based random number generator that is matched with an employee's social security number, payroll identification number, or other appropriate identification number. However, during the first 12 months following the institution of random drug testing under this part, each operator shall meet the following conditions:

(1) The random drug testing is spread reasonably through the 12-month period;

(2) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(3) The total number of tests conducted during the 12 months is equal to at least 25 percent of the covered population.

(d) *Testing based on reasonable cause.* Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a pro-

hibited drug be based on articulable using a pro-specific, cor-havioral, or probable dr-employee's trained in symptoms-tiate and c-an employ-the two s-phone. Ho-tors with-to testing-pervisor c-ecting p-shall sub-

(e) Ret-employee w-pass a dru-until the-administ-medical-that the-An empl-be subje-follow-u-notice f-after his

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989]

§ 199.13

(a) E-drug te-drug t-the De-Servic-

(b) T-permit

(1) L-the 1:contr-

(2) -ing e-time-trato-state-tive

§ 199.

(a) -shall-view-not-to

(a) *Pre-employment testing.* No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirement³ of this part.

(b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps must be taken to obtain a urine sample. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

Random testing. Each operator shall administer, every 12 months, a number of random drug tests at a rate equal to 50 percent of its employees. Each operator shall select employees for testing by using a random number table or a computer-based random number generator that is matched with an employee's social security number, payroll identification number, or other appropriate identification number. However, during the first 12 months following the institution of random drug testing under this part, each operator shall meet the following conditions:

- (1) The random drug testing is spread reasonably through the 12-month period;
- (2) The last test collection during the year is conducted at an annualized rate of 50 percent; and
- (3) The total number of tests conducted during the 12 month³ is equal to at least 25 percent of the covered population.

(d) *Testing based on reasonable cause.* Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a pro-

hibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicator³ of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this part, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(e) *Return to duty testing.* An employee who refuses to take or does not pass a drug test may not return to duty until the employee passes a drug test administered under this part and the medical review officer has determined that the employee may return to duty. An employee who returns to duty shall be subject to a reasonable program of follow-up drug testing without prior notice for not more than 60 months after his or her return to duty.

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-Z, 54 FR 51850, Dec. 18, 1989]

§ 199.13 Drug testing laboratory.

(a) Each operator shall use for the drug testing required by this part only drug testing laboratories certified by the Department of Health and Human Services under the DOT Procedures.

(b) The drug testing laboratory must w - t -

(1) *Inspections* by the operator before the laboratory is awarded a testing contract; and

(2) Unannounced inspections, including examination of records, at any time, by the operator, the Administrator, and if the operator is subject to state agency jurisdiction, a representative of that state agency.

§ 199.16 Review of drug testing results.

(a) *MRO appointment.* Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may

contract for the provision of MRO services as part of its anti-drug program.

(b) *MRO qualifications.* The MRO must be a licensed physician with knowledge of drug abuse disorders.

(c) *MRO duties.* The MRO shall perform the following functions for the operator:

(1) Review the results of drug testing before they are reported to the operator.

(2) Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

(i) Conduct a medical interview with the individual tested.

(ii) Review the individual's medical history and any relevant biomedical factors.

(iii) Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.

(iv) If necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

(v) Verify that the laboratory report and assessment are correct.

(3) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT Procedures may be returned to duty.

(4) Determine a schedule of unannounced testing, in consultation with the operator, for an employee who has returned to duty.

(5) Ensure that an employee has been drug tested in accordance with the DOT Procedures before the employee returns to duty.

(d) *MRO determinations.* The following rules govern MRO determinations:

(1) If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.

(2) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohib-

ited drug, the MRO shall refer the individual tested to an employee assistance program, or to a personnel or administrative officer for further proceedings in accordance with the operator's anti-drug program.

(3) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system.

[53 FR 47096, Nov. 21, 1988, as amended by Amdt. 199-2, 54 FR 51850, Dec. 18, 1989]

§ 199.17 Retention of samples and retesting.

(a) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT Procedures. Within this 365-day period, the employee or his representative, the operator, the Administrator, or, if the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-period.

(b) If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the original sample must be retested if the employee makes a written request for retesting within 60 days of receipt of the final test result from the MRO. The employee may specify retesting by the original laboratory or by a second laboratory that is certified by the Department of Health and Human Services. The operator may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee must be reimbursed for such expense if the retest is negative.

(c) If the employee specifies retesting by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample.

(d) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT Procedures, but equal to or greater than the established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results.

[53 FR 47096, Nov. 21, 1988; 55 FR 797, Jan. 9, 1990]

§ 199.19 Employee assistance program.

(a) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP must include education and training on drug use. At the discretion of the operator, the EPA may include an opportunity for employee rehabilitation.

(b) Education under each EAP must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.

(c) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.

§ 199.23 Contractor employees.

With respect to those employees who are contractors or employed by a contractor and an operator may provide by contract that the drug testing, education, and training required by this part be carried out by the contractor provided:

(a) The operator must ensure that this part applies to the contractor's employees.

(b) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

§ 199.23 R

(a) Each operator must ensure that this part applies to the contractor's employees.

(b) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(c) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(d) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(e) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(f) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(g) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(h) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(i) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(j) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(k) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(l) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(m) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

(n) The contractor must be subject to the Administrator's agency, a agency for the operator's requirement.

Employee specifies retesting laboratory, the original must follow approved chain-of-procedures in transferring a sample. Some analytes may deteriorate in storage, detected levels may show the detection limits established by the DOT Procedures, but if greater than the established limits, must, as appropriate, be reported and corroborative of the positive results.

Nov. 21, 1988; 55 FR 797, Jan. 3,

Employee assistance program.

The operator shall provide an assistance program (EAP) for employees and supervisory personnel to determine whether an employee has drug tested based on. The operator may establish the EAP as a part of its internal services or the operator may contract with an entity that provides such services. Each EAP must include training on drug testing at the discretion of the operator. The EAP may include an opportunity for employee rehabilitation.

Information under each EAP must include, at least the following elements: (1) Distribution of information; (2) Display and distribution of information; (3) Community service hotline; (4) Number for employee assistance; (5) Display and distribution of the employer's policy regarding the use of drugs.

Information under each EAP for supervisory personnel who will determine if an employee must be drug tested on reasonable cause must include one 60-minute period of training on the specific, contemporaneous, behavioral, and performance factors of probable drug use.

Contractor & play-

With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this section be carried out by the contractor.

(a) The operator remains responsible for ensuring that the requirements of this part are complied with: and

(b) The contractor allows access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this part.

§ 199.23 Recordkeeping.

(a) Each operator shall keep the following records for the periods specified and permit access to the records as provided by paragraph (b) of this section:

(1) Records that demonstrate the collection process conforms to this part must be kept for at least 3 years.

(2) Records of employee drug test results that show employees who had a positive test, and the type of test (e.g., post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least 5 years, and include the following information:

(i) The function performed by each employee who had a positive drug test result.

(ii) The prohibited drug(s) that were used by an employee who had a positive drug test.

(iii) The disposition of each employee who had a positive drug test or refused a drug test (e.g., termination, rehabilitation, removed from covered function, other).

(3) Records of employee drug test results that show employees passed a drug test must be kept for at least 1 year.

(4) A record of the number of employees tested, by type of test (e.g., post-accident), must be kept for at least 5 years.

(5) Records confirming that supervisors and employees have been trained as required by this part must be kept for at least 3 years.

(b) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, except that such information must be released regardless of consent to the Administrator or the representative of a state agency upon request as part of an

accident investigation. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the Administrator or the representative of a state agency upon request.

[53 FR 47096, Nov. 21, 1988, as amended at 58 FR 63260, Dec. 23, 1993]

§ 199.25 Reporting of anti-drug testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual MIS report to RSPA of its anti-drug testing results in the form and manner prescribed by the Administrator, not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA.

(b) Each report, required under this section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, room 2335, 400 Seventh Street, SW., Washington, DC 20530.

(c) Each report shall be submitted in the form and manner prescribed by the Administrator. No other form, including another DOT Operating Administration's MIS form, is acceptable for submission to RSPA.

(d) Each report shall be signed by the operator's anti-drug program manager or designated representative.

(e) Each operator's report with verified positive test results or refusals to test shall include all of the following informational elements:

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the anti-drug rules of another operating administration.

(3) Number of specimens collected by type of test.

(4) Number of positive test results, verified by a Medical Review Officer (MRO), by type of test and type of drug.

(5) Number of employee action(s) taken following verified positive(s), by type of action(s).

(6) Number of negative tests reported by an MRO by type of test.

(7) Number of persons denied a position as a covered employee following a verified positive drug test.

(8) Number of covered employees, returned to duty during this reporting period after having failed or refused a drug test required under the RSPA rule.

(9) Number of covered employees with tests verified positive by an MRO for multiple drugs.

(10) Number of covered employees who refused to submit to a random or non-random (post-accident, reasonable cause, return-to-duty, or follow-up) drug test and the action taken in response to each refusal.

(11) Number of supervisors who have received required initial training during the reporting period.

(f) Each operator's report with only negative test results shall include all of the following informational elements:

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the anti-drug rules of another operating administration.

(3) Number of specimens collected by type of test.

(4) Number of negative tests reported by an MRO by type of test.

(5) Number of covered employees who refused to submit to a random or non-random (post-accident, reasonable cause, return-to-duty, or follow-up) drug test and the action taken in response to each refusal.

(6) Number of supervisors who have received required initial training during the reporting period.

[58 FR 68261, Dec. 23, 1993]

Subpart B-Alcohol Misuse Prevention Program

SOURCE: Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, unless otherwise noted.

§ 199.200 Purpose.

The purpose of this subpart is to establish programs designed to help prevent

accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to parts 192, 193, or 195 of this chapter.

§ 199.201 Applicability.

This subpart applies to gas, hazardous liquid and carbon dioxide pipeline operators and liquefied natural gas operators subject to parts 192, 193, or 195 of this chapter. However, this subpart does not apply to operators of master meter systems defined in § 191.3 or liquefied petroleum gas (LPG) operators as discussed in § 192.11 of this chapter.

§ 199.202 Alcohol misuse plan.

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this subpart and the DOT procedures in part 40 of this title. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

§ 199.203 Alcohol testing procedures.

Each operator shall ensure that all alcohol testing conducted under this subpart complies with the procedures set forth in part 40 of this title. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to operators by this subpart.

§ 199.205 Definitions.

As used in this subpart:

Accident means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid or carbon dioxide pipeline facilities.

Administrator means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of